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RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 99-038

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

Section 448.62 (3) and (4), Stats., provide that licensure is not required for podiatry students engaged in required education and training, and podiatrists licensed in other jurisdictions who provide consultations and demonstrations with Wisconsin podiatrists.

The provisions of ss. Pod 1.07 and 1.08 should be reviewed for potential conflicts with s. 448.62 (3) and (4), Stats. The board should consider including cross-references to these statutes in the cited rules.

2. Form, Style and Placement in Administrative Code

a. Because ss. Pod 1.01, 2.01, 3.01, 4.01, 5.01 and 6.01 all cite the same statutory provisions as authority for chs. Pod 1 to 6, only one rule section, s. Pod 1.01, is necessary to state the authority and purpose for the rule.

Specifically, s. Pod 1.01 could be redrafted as follows:

Pod 1.01 Authority and purpose. Chapters Pod 1 to 6 are adopted by the podiatrists affiliated credentialing board under ss. 15.085 (5) (b), 227.11 (2) and 448.695, Stats., and govern the

practice of podiatric medicine and surgery under subch. IV of ch. 448, Stats.

This provision makes it unnecessary to include similar sections in chs. Pod 2 to 6.

b. Rules should be drafted using the present tense and active voice, and the word “shall” is used to denote mandatory actions and directives. [See s. 1.01 (1) and (2), Manual.]

For example, in s. Pod 1.05 (1) (c), “must” should replace “shall.” In sub. (2), “shall utilize” should replace “utilizes” in the first sentence. In the third sentence of sub. (2), “shall arrange” should replace “is responsible for arranging for.” In sub. (3), “shall” should replace “will.” Similar revisions should also be made in subs. (4) and (5), and in ss. Pod 3.02 (2) and 4.04.

As another example, in the first sentence of s. Pod 1.11 (3), “the board shall issue a notice of denial” should replace the material after the comma.

c. Latin and other foreign terms should be avoided when drafting administrative rules. [See s. 1.01 (1), Manual.] Therefore, another phrase should be substituted for “locum tenens” in s. Pod 1.08. If a Latin phrase must be used, it should be defined somewhere in the rule.

d. Regarding the definitions sections [ss. Pod 2.02, 4.02, 5.02 and 6.02] in the draft, it appears that several terms are defined more than once, and some of the defined terms are also used in ch. Pod 1, which does not have a definitions section.

It is suggested that all of the above provisions be consolidated into a single section for definitions that applies to all of the rules [chs. Pod 1 to 6] and is located at the beginning of ch. Pod 1.

e. In s. Pod 3.02 (1), “provided” should be deleted.

f. In s. Pod 4.03, in the first sentence, “as it appears in the records of the board” is unnecessary and should be deleted.

g. In the second sentence of s. Pod 4.04, “deemed” should be deleted.

h. In s. 4.05 (2) (b), it is unclear if an inquiry is mandatory or discretionary. If it is discretionary, “may” should replace the first “shall.” In either case, “as it finds necessary” should be deleted.

i. In s. Pod 5.04 (2), “specified” should be deleted.

j. In s. Pod 5.05 (2) (a), par. (b) (intro.) and subds. 1. and 2. should be combined into a single introductory clause.

k. In s. Pod 6.03 (1), “administered to” should be deleted.

4. Adequacy of References to Related Statutes, Rules and Forms

a. Sections Pod 1.04, 1.08 (1) (d), 1.09 (1) (a), 1.10 (1) (intro.) and other sections of the rule refer to “the required fees.” This phrase should be clarified by a specific reference to the fees required “under s. 440.05 (1), Stats.” or a specific reference to a different statute, rule or dollar amount.

b. In s. Pod 1.07 (4), “the Wisconsin administrative code” should be replaced by “chs. Pod 1 to 6.”

c. Section Pod 5.03 refers to “16 CFR 1700.14 (1982) of the federal poison prevention packaging act.” It appears that the board is mixing a reference to a federal act and a federal regulation. This reference should be reviewed. [Also see s. 1.07 (3), Manual.]

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In the last sentence of s. Pod 1.02 (2), “shall approve the” should replace “recognizes as approved those.”

b. In s. Pod 1.05 (1) (a) 4., “to have been” should be deleted; and in subd. 11., “has been” should be deleted.

In sub. (1) (c), “become qualified for grant of” should be replaced by “qualify for a.”

In the second sentence of sub. (2), “examination” should replace “of them”; and in the last sentence of sub. (3), “is on” should replace “shall lie upon.”

Finally, the second sentence of sub. (3) is overly long and should be divided into two sentences. Therefore, “examination. If” should replace “examination and if”.

c. In s. Pod 2.02 (2) (c) and (d), “licensure” or “a license” should replace “license.” In par. (g), “patient or public” should be replaced by “a patient or the public.” In par. (o), “other” should replace “otherwise.” In par. (u), “of like meaning,” is redundant.

d. In s. Pod 5.06, a comma should be inserted after “contain.”